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March 26, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

RE: Implementation of Section 273 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, CC Docket No. 96-254

Dear Mr. Caton,

Pursuant to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 96-472 released December 11, 1996, please find enclosed an original and eleven copies of Bellcore's Reply Comments (including copies for each Commissioner) for filing. In accordance with the Notice, four copies are being provided to the Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, Room 230, Washington, DC 20554, and one copy is being provided to the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, NW, Suite 140, Washington, DC 20037.

Please stamp and return one copy to confirm your receipt. Please communicate with me if you have any questions concerning this matter.

Sincerely,

Michael J. Knapp

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Implementation of Section 273 of the	)	CC Docket No. 96-254
Communications Act of 1934, as amended	)	
by the Telecommunications Act of 1996	)	

REPLY OF BELL COMMUNICATIONS RESEARCH, INC.

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By:

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March 26, 1997

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SUMMARY OF COMMENTS

Bellcore's Reply begins by reiterating major points made in Bellcore's comments in this proceeding: (1) Bellcore's owners are in the process of selling their Bellcore interests to Science Applications International Corporation ("SAIC"), after which Bellcore will no longer be affiliated with a Bell Operating Company; (2) after the sale, Bellcore will be no different than other independently-owned providers of professional services, standards-related and certification services, and therefore should not be treated differently than those other sources under Section 273(d) of the Act; (3) while Bellcore currently plans to provide services in the future that are comparable to those provided in the past to owners, clients and the industry generally – the value of which has been recognized by the industry and the Commission – its ability to do so will depend on the attractiveness of Bellcore's offerings, and on Bellcore not being artificially hobbled or treated differently than competitors.

The Reply proceeds to address five matters raised by other commenters, removal of manufacturing restrictions, funding, "front-end" loading, manufacturing safeguards and sunset:

- Removal of Manufacturing Restrictions. Upon sale, Bellcore will be neither owned nor controlled by more than one BOC, and therefore will be free to manufacture, if it complies with the safeguards of Section 273(d)(2)-(3). We note that "control" is irrelevant to such a determination under Section 273(d)(1)(B), but even if it were, BOCs will not have such control after the sale is complete.

- Funding. It is inappropriate and inconsistent with the statutory plan to regulate terms or pricing of Bellcore's contracts with its customers (and those of other non-accredited standards or generic requirements development organizations with their customers). The Commission can ensure achievement of the statutory purposes by standing ready to entertain complaints. The very presence of a Commission forum for resolution of complaints will serve as a deterrent to abuse.

- "Front-End Loading. Bellcore must satisfy its customers needs to be successful, and when one customer, Northern Telecom, expressed concern about draft contract provisions, Bellcore worked to formulate alternatives that would meet the needs of Northern Telecom and other similarly situated clients. We worked out mutually acceptable procedures for providing potential participants in a standards development project information on others' interest (while providing such others an opportunity to maintain their interest confidential if they so request), and procedures for participants in large projects, *i.e.* projects where the fee to each participant will exceed $50,000, to participate in an initial "try before you buy" phase before committing to a more costly detailed development phase. These procedures satisfy Northern Telecom's concerns about "front-end" loading and information, and, in Bellcore's view, will also meet TIA's concerns about such front-end loading. Such procedures will be available, on a non-discriminatory basis, to all entities interested in a given industrywide generic requirements development activity.

- Manufacturing Safeguards. Northern Telecom urges the Commission to implement safeguards to ensure that "a company's manufacturing operations contribute to and influence the standards development processes on a co-equal basis with other industry participants." We believe that such a principle could be workable if it is stated as Northern Telecom does. However, if the "safeguards" are to be comparable to the type of structural separation established in Section 273(d)(3)(B) between manufacturing and certification activities, Bellcore strongly opposes this as inconsistent with the statutory scheme. In particular, there should be no limitation on the ability of an expert on a technology involved in consulting, standards development and/or certification to make his/her expertise on that technology available to the manufacturing operations (so long as proprietary information is appropriately safeguarded).

- Sunset. TIA proposes imposition of a burden of production on an entity that wishes to avail itself of the Section 273(d)(6) sunset provision. However, the information involved would be proprietary to others, and not available to Bellcore (or other entities seeking sunsetting). Bellcore believes that its comments address the type of showing that appropriately should be made.

Bellcore urges the Commission to be sensitive in wielding its Section 273(d) regulatory power. Bellcore competes with a variety of alternative sources of the consulting, generic requirements development and certification activities it undertakes. The Section 273(d) language properly acknowledges this competition by applying its standards and generic requirements development and certification safeguards to "any" entity engaged in the defined activities, and not

just Bellcore. We urge the Commission not to seek to single Bellcore out for unique treatment and thereby depart from this congressional plan.

Only in one area did Congress address Bellcore specifically, when it prohibited manufacturing by Bellcore, but acknowledged the potential for a sale of Bellcore and addressed the effects of such a sale. Section 273(d)(1) makes clear that a sold Bellcore is not to be considered a successor or assign of a BOC, that it is to be permitted to manufacture telecommunications equipment and customer premises equipment if it conforms to the specific safeguards of the remainder of Section 273(d), and that it is not to be considered a common carrier under title II of the Communications Act. We urge the Commission to follow this congressional plan.

Bellcore has long protected others' proprietary information, and will continue to do so (and thereby comply with Section 273(d)(2)).

Sections 273(d)(3)-(4) establish limited and precisely targeted requirements on how Bellcore and other entities performing similar activities are to engage in certification and develop industrywide standards and generic requirements. Section 273(d)(5) establishes a dispute resolution process for resolution of disputes by funding participants in development of industrywide standards and generic requirements, and Section 273(d)(6) establishes sunsetting procedures. We urge the Commission not to seek to go beyond these precisely targeted requirements, and to resist attempts to competitively handicap Bellcore.

Finally, we ask the Commission to measure the <u>potentials</u> for Bellcore misconduct raised by adversaries against Bellcore's <u>actual</u> conduct over the past thirteen years, and to bear in mind the parochial interests that these adversaries seek to protect. It is true that Bellcore did not manufacture during that period, and can be said to have had less incentive to disadvantage other companies than it might in the future. But, one of Bellcore's primary assets is its reputation for

vendor-independent work, in its consulting, standards development and certification activities. Bellcore will have no value to its customers if it is, or is perceived as, biased in favor of its own manufacturing. Generic requirements and certification only have value if their funders choose to use them. If generic requirements developed by Bellcore or certification by Bellcore are suspect, future Bellcore activities will not be funded. In a sold environment, Bellcore will have an increased business need to prove its worth to customers that have no potential incentive or reason to utilize Bellcore's services, other than the value of such services to them.

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REPLY OF BELL COMMUNICATIONS RESEARCH, INC.

To: The Commission

I. INTRODUCTION.

In its Notice of Proposed Rulemaking in this proceeding, the Commission sought comment on a number of manufacturing-related issues related to Section 273 of the Telecommunications Act of 1996 ("Act"). Bell Communications Research, Inc. ("Bellcore") filed comments on March 24, 1997 addressing those of its activities that may be impacted by Section 273.

Bellcore noted that its current owners, the Regional Companies, are in the process of selling their Bellcore interests to Science Applications International Corporation ("SAIC"), after which Bellcore will no longer be affiliated with a Bell Operating Company. After the sale, Bellcore will be no different than other independently-owned providers of professional services and software development, and other independently-owned sources of the standards-related and certification services at issue in this proceeding; and therefore, Bellcore should not be treated differently than these other sources in terms of the application of Section 273(d) to its activities.

Bellcore's comments emphasized the value of its services to its owners and clients in the past, and to the industry generally, a value that has been recognized by the Commission. We noted that Bellcore currently plans to provide comparable services in the future, but its ability to not only provide such services, but also to expand the availability of such services throughout the industry, will depend on the attractiveness of Bellcore's offerings – which will depend, in large measure, on it not being artificially hobbled or treated differently than its competitors. We urged the Commission to recognize the need to treat Bellcore alike with competitors.

Bellcore's comments addressed certain general policy matters that relate to multiple issues of the Notice of Proposed Rulemaking: (1) Section 273(d) establishes a limited and precisely targeted form of regulation of certain Bellcore activities – and of other entities engaged in similar standards-related and certification activities; (2) after a sale Bellcore will be free to manufacture, provided that it conforms to the separation of certification and manufacturing activities specified in the statute;[1] (3) telecommunications standards are beneficial, necessary and pro-competitive; and (4) proper treatment of proprietary information is essential (*i.e.*, information required to be disclosed should be limited in scope and use to achievement of the specific statutory purposes, suppliers' proprietary information must be protected, and appropriate non-disclosure agreements

[1] In response to the Commission's invitation of comment on unstated "other implications of Bellcore's sale" Bellcore responded that it strongly believes that it is inappropriate to broadly inquire into the sale for two reasons. First, the statute anticipates a Bellcore sale. In fashioning the language of Section 273(d)(1) addressing the status of a sold Bellcore, Congress expressly dealt with the effects of a sale resulting in a Bellcore that would no longer be affiliated with any Bell Operating Company, without inviting or requiring an inquiry into its nature. And second, the Bellcore sale has no relevance to the matters at issue in this Section 273 proceeding (other than the manufacturing limitation that applies to Bellcore until it is sold).

should be used). Bellcore's comments also addressed specific issues of the Notice by paragraph number. [2]

II. COMMENT ON SPECIFIC ISSUES

The foregoing comments will not be repeated in this Reply. Rather, we are confining our reply to several arguments raised by the Telecommunications Industry Association ("TIA") with which Bellcore strongly disagrees, and to points raised by Northern Telecom, Inc. ("Northern Telecom") which we address herein. We are addressing only those matters which could most adversely affect Bellcore's future. In so doing, however, we do not concede other positions in our direct comments that differ from those of other commenting parties.[3]

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[2] Bellcore responded to specific issues of the Notice, including: (1) implications on negotiations concerning reductions of trade barriers; (2) research is not "collaboration"; (3) royalties should be permitted so as not to limit incentives to fund research and innovation (at Bellcore and elsewhere); (4) information dissemination; (5) definition of "standards"; (6) protection of proprietary information; (7) manufacturing (separate affiliate, equipment classes, eighteen month period); (8) discrimination; (9) standards setting organizations (applicability of the statute only to some standards and not all, modification, information dissemination, funding party); (10) certification activities (meaning of "published," "auditable," and "industry-accepted," and the importance of "available" and "unless otherwise agreed upon by the parties funding and performing such activity"); (11) monopolization; (12) ANSI IPR policy; and (13) sunset.

[3] TIA has raised an additional unfair procedural wrinkle on one matter that Bellcore did address in its comments, sunset. In its comments, TIA proposes that any entity seeking to avail itself of the sunset provisions should "bear the burden of producing procurement documents or other information to support their request for relief" and "provide documentation demonstrating that alternative standards or generic requirements are actually in use on an 'industry-wide' basis . . . ." TIA comments, 44. Bellcore's comments address the type of showing that should appropriately be made. However, we take specific issue with the new burden of production that TIA is proposing. Their proposal would require Bellcore to have access to proprietary information on corporate procurement by clients and non-clients, which competitively-sensitive information would simply not be available to Bellcore.

A. Removal of Manufacturing Restrictions

Although the statute provides for a sale of Bellcore and immediate removal thereafter of restrictions on manufacturing of telecommunications equipment and customer premises equipment (subject to the safeguards of Section 273(d)(2) and 273(d)(3)), TIA argues that the Commission is not in a position to conclude that Bellcore should no longer be considered a BOC, a BOC affiliate, or a BOC successor or assign.

Of course, it is not surprising that TIA, a trade association of over 600 manufacturers and suppliers of telecommunications equipment,[4] wishes Bellcore not to manufacture upon completion of its sale – and thereby compete with TIA members – and is urging the Commission to institute additional proceedings, presumably as protracted as TIA can possibly make them, before it may do so.[5] Bellcore agrees completely with the Commission's tentative conclusion that sale of their interests by each of the BOCs to SAIC will render Bellcore unaffiliated with two or more BOCs, and therefore free to manufacture. Significantly, one manufacturer commenter, Northern Telecom, similarly concurs with the Commission's tentative interpretation of the statute that upon sale the bar on Bellcore manufacturing will no longer be applicable.[6]

First, TIA's reference to future provision of services by a sold Bellcore to BOCs as a form of continued affiliation is inconsistent with the circumstances addressed by Section 273(d).

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4 TIA comments, 1.

5 As noted, *supra* note 1, there is no reason to engage in protracted inquiry on the Bellcore sale.

6 Comments of Northern Telecom Inc. (hereafter, "NTI comments"), 10. Northern Telecom seeks adequate safeguards to mitigate against conflicts of interest between parts of the company engaged in manufacturing, and parts of the company establishing standards and/or certifying telecommunications equipment. This safeguards issue is addressed *infra*.

Congress contemplated both a sale of Bellcore and the continued provision of services by Bellcore to BOCs. Congress in no way ever contemplated termination of business by Bellcore with the BOCs once Bellcore was sold, nor did it contemplate an indefinite bar on manufacturing by Bellcore. To do so would be anticompetitive. TIA's reference to "volume and percentage of Bellcore's revenues attributable to its contracts with the RBOCs, in relation to its business with other entities, as well as any rights retained by the BOCs with respect to the activities or assets (e.g., patent rights) of Bellcore"[7] as indicating a form of continued affiliation is inconsistent with this.[8]

Indeed, assuming that a sold Bellcore continues to be an attractive supplier of services to BOCs, and therefore continues to receive significant revenues from them, under TIA's formulation Bellcore would be barred indefinitely, potentially far longer than any BOC, from manufacturing. Such denial of Bellcore's ability to compete with other manufacturers would be flatly inconsistent with Congress' intended "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." H.R. Rep. No. 458 (Conference Report), 104th Cong. 2d Sess. (1996), at 1.[9]

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7 TIA comments, 29, note 68.

8 Indeed, had volumes and percentages been a proper decisional factor as a policy matter, then Congress would have addressed this in a broader context, and invited Commission inquiry into other companies with sizeable volumes and percentages of sales to BOCs.

9 If such a result were lawful, it would also be illogical, since the current restriction on Bellcore's ability to manufacture derives from its ownership by BOCs that, through their original corporate parent, originally agreed to the manufacturing restrictions of the Modification of Final Judgment ("MFJ"), and which are themselves subject to the FCC's common carrier regulatory authority – and this ownership will have been severed. Upon

Second, what is critical is that after the sale, Bellcore will neither be owned nor controlled by more than one BOC, or indeed by any BOC. Upon sale, Bellcore will be a wholly-owned subsidiary of SAIC, with no ownership by a BOC. BOCs will not have any membership on Bellcore's board (or SAIC's board), nor will they have any power to direct or otherwise control any of Bellcore's activities.

"Control" is not even relevant to restriction of Bellcore's ability to manufacture under Section 273(d)(1)(B). Section 273(d)(8)(A) states that:

> (A) The term 'affiliate' shall have the same meaning as in section 3 of this Act, **except that, for purposes of paragraph (1)(B)** –
>
> (i) an aggregate voting equity interest in Bell Communications Research, Inc. of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated Bell operating company, shall constitute an affiliate relationship; and
>
> (ii) a voting equity interest in Bell Communications Research, Inc., by any otherwise unaffiliated Bell operating company of less than 1 percent of Bell Communications Research's total voting equity shall not be considered to be an equity interest under this paragraph.

[emphasis added]. The exception applies to Section 273(d)(1)(B), the section that currently restricts Bellcore from manufacturing. The exception language addresses only voting equity interests, and not direct or indirect control – the latter is in the section 3 language which Section 273(d)(8)(A)(i)-(ii) replaces when Section 273(d)(1)(B) is involved.

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sale, what would be left is a stand-alone restriction on Bellcore's ability to manufacture. This restriction would trace not to the agreement of the BOCs to the MFJ, or the Commission's common carrier regulatory authority, but rather to legislation that, if interpreted as TIA wishes, would uniquely restrict Bellcore. We need not address whether the BOCs' agreement to the manufacturing prohibition (through AT&T) and the FCC's common carrier regulatory authority over them are sufficient to support the constitutionality of singling them out for special treatment in the Act. Bellcore believes that imposing special restrictions on it after Bellcore is divorced from BOC ownership would represent an unconstitutional a bill of attainder. *See,* United States v. Lovett, 328 U.S. 303, 315 (1946); Calif. Dept. of Corr. v. Morales, 115 S.Ct. 1597, 1608 (1995); Plant v. Spendthrift Farm, 115 S.Ct. 1447, 1463 (1995).

Nevertheless, assuming *arguendo* that control has some relevance here, BOCs will not have control over Bellcore's activities, in any normal usage of the term "control." The sale of services and products simply does not represent control unless – as will not be the case here – the purchaser has the right or power to direct the business policies and operations of the vendor. We anticipate (and, frankly, hope) that Bellcore's products and services will continue to be attractive to BOCs, but the BOC proportion of Bellcore's business is likely to decline because Bellcore will continue to increase its sales to other customers. In this regard, Bellcore's sales to non-affiliates have been growing approximately 20 percent a year for the past three years, currently to more than 800 non-affiliates, and we expect this growth to continue.

In 1996, Bellcore received some 77 percent of its revenues ($774 million of its $1.010 billion revenues) from BOCs. After the sale, Bellcore will be part of SAIC, which received $2.2 billion in revenues in 1996.[10] Let us assume that the sold Bellcore continues to receive revenues from the BOCs at last year's $774 million level and that Bellcore and SAIC revenues from other sources do not increase. Under these unrealistically conservative assumptions, BOC revenues would represent some 24 percent of SAIC's overall revenues after the sale ($774 million as a percentage of $3.21 billion)[11]. This simply does not rise to a level of any form of *de facto*

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[10] SAIC Corporate Fact Sheet web page, http://www.saic.com/aboutsaic/facts.html, as accessed on March 25, 1997.

[11] In fact, given that SAIC's revenues have been growing recently at a 12 percent rate, *see id.*, and Bellcore's non-owner revenues have been growing at a 20 percent rate, even if BOC revenues remain constant the percentage of revenues received from BOCs would be about 20 percent in 1998 and less thereafter.

control,[12] and may well represent a lower percentage of overall revenues earned from BOCs than other telecommunications manufacturers will be earning.[13]

Furthermore, the foregoing assumes implicitly that the seven Regional Companies would act in concert in any attempt to control Bellcore. This is an unwarranted assumption. The Regional Companies act independently today, and they certainly will do so in the increasingly competitive environment of the Act. Thus, a more proper examination would be of the percentage of Bellcore's revenues and SAIC's revenues that each Regional Company represents, currently some 11 percent of Bellcore's revenues ($110 million on average as a percentage of Bellcore's $1.010 billion), and some 3.4 percent of SAIC's revenues after the sale ($110 million as a percentage of the combined $3.21 billion).

Third, TIA's reference to BOC patent rights appears misplaced. If the BOCs have rights to Bellcore patents, they will be free to manufacture embodiments of the licensed technology themselves or obtain them from others without having to secure the right to do so from, or paying

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[12] Indeed, even in the area of direct or indirect foreign control of a corporate licensee under Section 310 of the Communications Act, Congress has permitted foreign entities to own up to 25 percent without securing special Commission authorization. Ownership certainly represents more control than mere receipt of revenues from separate companies.

[13] Furthermore, if Bellcore is to be regarded as having a continued affiliation with BOCs after the sale because it will be receiving revenues from them, is SAIC similarly to be regarded as a successor Bellcore with an affiliation with BOCs through its ownership of Bellcore? Surely SAIC, an entity that manufactured prior to enactment of the Act, will not be restricted from manufacturing, since Section 273(d)(1) provides that "Nothing in this subsection restricts any manufacturer from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1996." It would be ridiculous to conclude that Congress intended to restrict manufacturing by an entity that acquired Bellcore. SAIC is free simply to merge the Bellcore operations with its own after the sale is consummated, free of any manufacturing restrictions. We believe that this result should obtain regardless of whether the Bellcore operations are merged with SAIC ones, or maintained as a separate corporation that is owned entirely by SAIC.

royalties to, Bellcore. Provision in the sales agreement for BOC rights to Bellcore patents after the sale further separates BOCs from Bellcore, because such rights will be automatic and need not be negotiated.

B. Funding

TIA invites the Commission to establish guidelines as to what types of funding arrangements for development of standards and generic requirements by non-accredited standards development organizations will be deemed "reasonable," "non-discriminatory" and non-exclusionary. It proposes that the Commission prescribe use of a "sliding-scale" funding approach similar to one employed by TIA, and that participants be given the opportunity to enter or exit and fund generic requirements projects at "various stages" (followed by a list of virtually all of the stages of such a project).[14] [15]

First, we urge the Commission not to accept TIA's invitation to regulate terms or pricing in Bellcore's contracts with its customers (and those of other non-accredited standards development organizations with their customers). Section 273(d)(1)(B) sets forth a principle that is applicable here: "Nothing provided in this subsection shall render Bell Communications Research, Inc. or any successor entity, a common carrier under title II of this Act."

TIA is seeking the application of tariff-like rate regulation, at the very time that the Commission has been, properly to achieve the purposes of the Act, deregulating, simplifying, and

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[14] TIA comments, 40.

[15] TIA also argues that requiring a large "up-front" investment or commitment at a point when the benefits of a project remain uncertain could operate to exclude smaller manufacturers from the process and place them at a competitive disadvantage. Both the "up-front" issue and the treatment of smaller businesses are addressed *infra*.

forbearing from regulation. It would turn the statute on its head if, in the unregulated pro-competitive telecommunications marketplace of the future, Bellcore and other non-accredited developers of industrywide generic requirements and standards were to end up as the only U. S. telecommunications-related entities subject to a form of rate regulation.[16]

Such a result is unnecessary. Bellcore can be successful in the future only if it satisfies its customers' needs, and those customers increasingly come from a diversity of sectors of the telecommunications industry. We are mindful of the need to encourage broad participation in development of generic requirements, not only to achieve the statutory purposes but also to ensure our success, and we intend to fashion procedures that make such participation attractive to small businesses as well as large.[17]

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[16] Since the requirements of reasonableness, non-discrimination and avoidance of unreasonable exclusion apply to development of industrywide standards and generic requirements by "any entity" that is not an accredited standards development organization, there would be no basis for singling Bellcore out in this regard.

[17] We are considering defining a "small business" for this purpose as an entity that, together with all corporate parents, affiliates, subsidiaries and brother/sister corporations (or comparable business entities) receives no more than $40 million in annual gross revenues, and we are considering providing such entities a 15% price reduction as compared with larger entities. These numbers are drawn from the Commission's analogous treatment of small businesses in its proceedings addressing competitive bidding for licenses. The Commission has variously defined small businesses by size, using annual gross revenue figures of $3 million, $15 million and $40 million, and has applied bidding credits to them, respectively, of 25 percent, 15 percent and 10 percent. *See, e.g.,* Competitive Bidding Proceeding (WT Docket No. 97-82), FCC 97-60, released Feb. 28, 1997, at para. 40; Local MultiPoint Distribution Service (LMDS) (CC Docket No. 92-297), 11 FCC Rcd. 53, 121 (1995), Second Report and Order, FCC 97-82, released Mar. 13, 1997 at para. 348; Wireless communications Service (WCS)(GN Docket No. 96-228), FCC 97-50, released Feb. 19, 1997 at paras. 194-95. Rather than utilizing a complex sliding schedule, Bellcore has simply used the middle bidding credit figure (15 percent) as a small business discount, but used the largest size index of $40 million (so as to make eligible for the discount the larger number of entities).

Second, TIA's invocation of its approaches to standards development notwithstanding, there are important differences between Bellcore and TIA. Bellcore is a business, with a professional staff that must be paid, other costs that must be covered, and a profit to be made. In contrast, TIA is a non-profit organization with limited staff, and its standards are developed through the cooperative efforts of its members, who bear their own participation costs individually – individual costs that are borne without any "sliding scale". The common costs that they bear through their payments to TIA are only a fraction of the total costs they sustain when TIA develops standards. The significant personnel and other costs that TIA's members bear individually, when TIA develops standards, are incurred by Bellcore when Bellcore develops generic requirements, and cannot reasonably be recovered through a complex sliding scale that, implicitly, would involve subsidization of large numbers of participants by others.

Third, TIA's one-participant/one-vote paradigm when combined with a sliding-scale with small payments at the low end, while facially "democratic," could lead to participation by large numbers of participants who have no strong interest in the particular generic requirement under development, but who slow or arrest its development.[18]

Fourth, enabling participants to enter and exit at will at all stages of a project will make it virtually impossible for Bellcore – and other non-accredited standards development organizations developing industrywide standards – to plan and price the development of generic requirements and standards. A standards development organization will offer participation at prices that are, in the final analysis, calculated based on some assumption of likely participation. If there are less participants than anticipated, a given standards development project might be undertaken at a

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[18] Some might seek to participate for nefarious purposes, to slow or disrupt development of a generic requirement, and they would be able to do so with little financial commitment.

financial loss. If participants can enter and exit at will, this will place all of the risk on the standards development organization. We believe that the "try before you buy" procedure addressed in the next section of this reply strikes a reasonable balance between TIA's desires and the need of Bellcore (and others) for some measure of funding certainty.[19]

And finally, the Commission can ensure achievement of the statutory purposes by merely standing ready to entertain complaints. The very presence of such a forum will serve as a deterrent to abuse and ensure compliance with the statutory mandate. The FCC should not, and need not, engage in regulation prospectively of the terms of Bellcore's contracts with its customers, and contracts of other non-accredited standards development entities developing industrywide standards with their customers.

C. "Front-End" Loading

While Northern Telecom agrees in principle that participants should fund their participation in standards development and generic requirements development activities of non-accredited standards development organizations, at the time it filed its comments it was concerned that Bellcore's initial efforts to implement the Section 273(d) process did not meet the statutory reasonableness standard. In particular, Northern Telecom was concerned that: (1) it might not have sufficient information to determine whether a given standards development project would

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[19] We also note that TIA's "various phases" list includes activities that are not normally associated with development of generic requirements, *e.g.*, testing. We may do some lab work on a concept, but that would be an integral part of the generic requirement development process and not a separate stage.

have sufficient participants to justify participation by Northern Telecom, and (2) it might have to make a go/no go decision up front with a relatively high entry fee.[20]

As noted previously, Bellcore must satisfy its customers' needs if it is to be successful. Northern Telecom is a customer, and when it expressed concern about draft contract provisions, we worked to formulate alternatives that would meet our mutual needs. We have been working on mutually acceptable procedures for providing potential participants information on others' interest (while providing an opportunity for such others to maintain the confidentiality of their interest if they so request), and for participants in large projects (*i.e.*, where the base fee for the work will exceed $50,000) to participate in an initial "try before you buy" phase of a project before committing to a more costly detailed development phase (under an 80/20 rule, *i.e.*, 20 percent of the total charges to be imposed in this initial phase, unless the parties agree otherwise). Because we have work in progress that does not have such phases, we will utilize this approach prospectively. Also, given that such a process has not been used before, we will constantly reexamine it and, as appropriate, improve it, while still meeting the identified concerns.

Northern Telecom has authorized Bellcore to represent that it is satisfied that, with such changes, Bellcore's approach would meet the statute's standard of being "administered in such a manner as not to unreasonably exclude any interested industry party." Such procedures will be available to all participants, and, in Bellcore's view, will also meet TIA's concerns about front-end loading.

D. Manufacturing Safeguards

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[20] Northern Telecom comments, 12-13. TIA similarly complains about a requirement that participants make funding investments or commitments at a point when the benefits of a particular project remain uncertain. TIA comments, 40-41.

Northern Telecom proposes that the Commission implement "safeguards to ensure that a company's manufacturing operations contribute to and influence the standards development processes on a co-equal basis with other industry participants."[21] We believe that such a principle could be workable if it is stated much as Northern Telecom does, *i.e.*:

> The manufacturing operations of any entity subject to the requirements of Section 273(d)(4) that itself, or through an affiliate, manufactures telecommunications equipment or customer premises equipment, may contribute to and influence the development of standards or generic requirements in accordance with Section 273(d)(4) only on a co-equal basis with other industry participants.

However, if the "safeguards" are to be comparable to the type of structural separation that Congress established in Section 273(d)(3)(B) between manufacturing and certification activities, Bellcore strongly opposes this. While Section 273(d)(3) requires structural separation between certification activities and manufacturing, Section 273(d)(4), addressing generic requirements and standards, does not establish any such structural separation. The distinction must be interpreted as intentional. There is no basis or reason for the Commission to establish structural separation that is additional to that of the statute.[22]

In particular, there should be no limitation on the ability of an expert on technology involved in the generic requirements development and/or certification operations – the operations that Northern Telecom suggests can be combined – to make his/her expertise on that technology available to the manufacturing operations (of course, only if this can be done consistently with protection of others' proprietary information). This would be particularly important in cutting-

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21 Northern Telecom comments, 10.

22 *See further,* Bellcore's comments herein addressing the limited and precisely targeted nature of the regulation of a sold Bellcore established in Section 273(d).

edge technologies, where there may be a limited pool of expertise nationwide or even worldwide, and Bellcore may have only one expert available to it. Bellcore should have the option of locating that person outside the manufacturing operations so that he/she can contribute to a variety of Bellcore's consulting, standards development and certification activities, and if so, he/she should not be barred from making expertise available to the manufacturing operations as well.

III. CONCLUSION

In conclusion, Bellcore urges the Commission to be sensitive in wielding its regulatory power in this area. As we stated in direct comments, and reiterate in this reply, Bellcore competes with a variety of alternative sources of the consulting, standards development and certification activities it undertakes. The Section 273(d) language properly acknowledges this competition by applying its standards development and certification safeguards to "any" entity engaged in the defined activities, and not just Bellcore. The Commission cannot single out Bellcore for unique treatment without improperly departing from this congressional plan.

Only in one area did Congress address Bellcore specifically, when it prohibited manufacturing by Bellcore, but acknowledged the potential for a sale of Bellcore and addressed the effects of such a sale. Section 273(d)(1) makes clear that a sold Bellcore is not to be considered a successor or assign of a Bell Operating Company, that it is to be permitted to manufacture telecommunications equipment and customer premises equipment if it conforms to the specific safeguards of the remainder of Section 273(d), and that it is not be considered a common carrier under title II of the Communications Act. We urge the Commission to follow this congressional plan.

Section 273(d)(2) prohibits Bellcore and all other standards development entities, and entities engaged in certification, from releasing or otherwise using proprietary information, designated as such by its owner, for any purpose other than purposes authorized by the owner. We would note that, like other standards development entities and those engaged in certification, Bellcore has needed access to other companies' proprietary information since its inception in 1984. Such access has been provided pursuant to mutually satisfactory enforceable non-disclosure agreements, and Bellcore has always taken very seriously the requirement that such information be protected and not misused. Bellcore must continue to be protective of such information to be successful in its business. Thus, Section 273(d)(2) is, in real terms, reflective of the way Bellcore already operates and will continue to operate.

Sections 273(d)(3)-(4) establish limited and precisely targeted requirements on how Bellcore and other entities performing similar activities are to engage in certification, and they are to develop industrywide standards and generic requirements. Section 273(d)(5) establishes a dispute resolution process for disputes by funding participants in standards development (previously addressed by the Commission), and Section 273(d)(6) establishes sunsetting procedures. There is no reason for the Commission to seek to go beyond these precisely targeted requirements, and to do so would be inconsistent with the statutory plan. We urge the Commission to resist attempts by others to competitively handicap Bellcore.

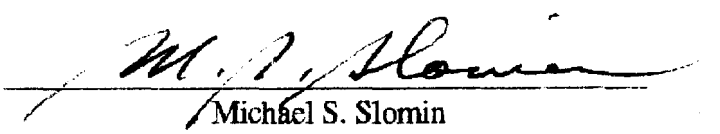
Finally, we ask the Commission to measure the potentials for Bellcore misconduct raised by adversaries against Bellcore's actual conduct over the past thirteen years, and to bear in mind the parochial interests that these adversaries seek to protect. It is true that Bellcore did not manufacture during that period and can be said to have had less incentive to disadvantage other companies than it might in the future. But, one of Bellcore's primary assets is its reputation for

vendor-independent work, in its consulting, standards development and certification activities. Bellcore will have no value to its customers if it is, or is perceived as, biased in favor of its own manufacturing. Generic requirements and certification only have value if their funders choose to use them. If generic requirements developed by Bellcore or certification by Bellcore are suspect, future Bellcore activities will not be funded. In a sold environment, Bellcore will have an increased business need to prove its worth to customers that have no potential incentive or reason to utilize Bellcore's services, other than the value of such services to them.

Respectfully submitted,

BELL COMMUNICATIONS RESEARCH, INC.

By:



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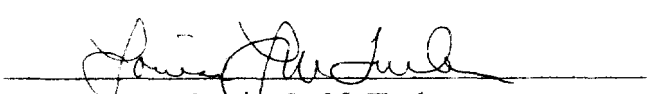

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March 26, 1997

CERTIFICATE OF SERVICE

I, Noemy Johnston, certify that this twenty-sixth day of March, 1997, I mailed, First Class mail postage prepaid, copies of the foregoing "Reply Comments of Bell Communications Research, Inc." in CC Docket No. 96-254 to the following:

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